

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

July 18, 2006

The Rhode Island Ethics Commission held its 13th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, July 18, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James C. Segovis

Barbara Binder, Vice Chair Frederick K. Butler*

George E. Weavill, Jr., Secretary Ross Cheit

Richard E. Kirby**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Dianne Leyden and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:05 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open Session held on June 20, 2006. Commissioner Cheit noted a typographical error in the last full paragraph of page 2. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To approve the minutes of the Open Session held on June 20, 2006, as corrected

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.
and Ross Cheit.**

ABSTENTION: James C. Segovis.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. This first advisory opinion was that of Wayne E. Cross, a member of the Exeter Town Council. The petitioner was present with counsel, Joseph Penza, Esq. Staff Attorney Gramitt explained that identical advisory opinion requests were submitted by fellow Council members William J. Devanney, DDS, and Diane Bampton Allen, who also were present. He indicated that all petitioners agreed to the same set of facts.

***Commissioner Butler arrived at 9:10 a.m.**

Attorney Penza noted Mr. Cross' agreement to the facts, and Ms. Allen and Dr. Devanney concurred. Staff Attorney Gramitt presented the Commission Staff recommendation and indicated that none of the petitioners had asked for the rule of necessity to be applied. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Wayne E. Cross, a member of the Exeter Town Council.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

Upon motion made by Commissioner Butler and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Diane Bampton Allen, a member of the Exeter Town Council.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

Upon motion made by Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to William J. Devanney, DDS, a member of the Exeter Town Council.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

The next advisory opinion was that of Gary T. Tedeschi, the Richmond Zoning Enforcement Officer. The petitioner was present. Senior Staff Attorney presented the Commission Staff recommendation. The petitioner also represented that he was appointed by the Town Council to the unpaid position of Deputy Building Official. Senior Staff Attorney D'Arezzo explained that the additional fact would not change the legal analysis. In response to Commissioner Weavill, the petitioner indicated that he would keep all three positions if the Council wanted him to do so. He clarified that his part-time position as Zoning Enforcement Officer is paid on an hourly basis and he can pick and choose the hours he works, including night hours. He advised that as Town Treasurer he oversees the Town payroll, but noted that he sends himself a memo for reimbursement of his travel expenses that is forwarded to the Council for approval.

Commissioner Binder voiced her concern that the petitioner appeared to be approving his own expenses. The petitioner replied that the Town Council is responsible for reviewing and approving all payroll items. Commissioner Segovis clarified that the petitioner forwards

his own requests to the Council for its approval. In response to Commissioner Cheit, the petitioner advised that he was the only qualified applicant who responded to the vacancy notice for the position. He noted that Richmond does not provide a significant salary and, as a result, it is unable to retain anyone in the position. Commissioner Weavill suggested that if the petitioner negotiates for the full-time position, the process by which the Council shall review and approve his payments should be disclosed. The petitioner informed that he would request that the Council place the Zoning Enforcement Officer position under the Building Official for approval purposes. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue and advisory opinion, attached hereto, to Gary T. Tedeschi, the Richmond Zoning Enforcement Officer.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

The next advisory opinion was that of Adrienne G. Southgate, the Providence Deputy City Solicitor, on behalf of the Providence City Council. The petitioner was present. Senior Staff Attorney D'Arezzo presented the Commission Staff recommendation and outlined Option #1 and Option #2. The petitioner expressed her concern that Option # 1 asks each Council member to make a judgment as to the likely success on the merits of his or her opponent. She noted it

would put the Council in a difficult position if it believes that a participating member's opponent would not be elected. Commissioners Weavill and Binder clarified that Option #1 prohibits the Council members who are seeking re-election from voting. Senior Staff Attorney D'Arezzo reiterated that Option #1 is an absolute prohibition.

Commissioner Binder stated that Option #2 presented a bright line test, where one may only vote if he or she is opposed in the election. Commissioner Cheit concurred. The petitioner stated her belief that the Commission previously issued an advisory opinion to the City of Pawtucket based on the fact that two year terms were the norm. She stated that Providence has four year terms and is looking for guidance under its current framework as to whether the Council could vote after the new term begins in January 2007. She explained that an outside consultant produces a report to the Salary Review Commission, and at each step recommendations are presented for review and public comment. She indicated that Charter constraints made it impossible to do anything prior to the June 28, 2006 candidacy declaration filing deadline. Otherwise, the proposed raises cannot take effect until January 2011.

Commissioner Cheit suggested that the only timing problem here is that the City was late in addressing this issue. Commissioner Segovis expressed that there is no reason to deviate from the prior, fundamental rule that such votes must be taken prior to filing

candidacy declarations just to address a missed deadline. He indicated his support for Option #1. Commissioner Butler agreed and suggested removing the word “whether” from language that the official is cognizant of the opposition, if any, they face in the next election. Senior Staff Attorney read back the proposed change in the relevant portions of the draft. In response to Commissioner Weavill, she advised that the timing of the vote would not be an issue if a majority of the membership were not seeking another term. The petitioner represented that only two members are not running for office again.

Upon motion made by Commissioner Binder and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue Option #1 of the draft advisory opinion, as amended by Commissioner Butler’s suggestion, to the Providence City Council.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

The petitioner requested clarification that the Council may not vote for a pay raise to be effective January 2007. Senior Staff Attorney D’Arezzo reiterated that the Council may only vote on a pay raise to be effective January 2011. In further response, she advised that such a vote must be taken prior to the filing of candidacy declaration

papers. Commissioner Cheit expressed his disappointment that not one member of the Council attended the Commission meeting.

The next advisory opinion was that of Samuel J. Shamoon, the former Director of the Department of Inspection and Standards for the City of Providence. Staff Attorney Leyden presented the Commission Staff recommendation. Upon motion made and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Samuel J. Shamoon, the former Director of the Department of Inspection and Standards for the City of Providence.

AYES: Ross Cheit, Barbara Binder, James C. Segovis, James Lynch, Sr., George E. Weavill, Jr. and Frederick K. Butler.

The next advisory opinion was that of A. Michael Steers, a member of the Little Compton Planning Board. Staff Attorney Leyden presented the Commission Staff recommendation. In response to Commissioner Segovis, she indicated that the petitioner represented that his spouse serves in a volunteer position. Commissioner Segovis inquired whether there should be any distinction given that his spouse is an officer of the organization and also expressed his belief that the use of the word “remote” was not correct in this situation. Commissioner Cheit concurred that “remote” was not the right word to use, but agreed with the Staff recommendation under a

financial benefit analysis. Commissioner Segovis stated that the Commission has previously dealt with non-profits differently, but expressed his concern that the petitioner's spouse is an executive officer. Commissioner Weavill informed that he is not as troubled here because the Planning Board's action is purely advisory. Commissioners Binder and Segovis indicated that they would like more information. Chair Lynch suggested that the matter be tabled so that the petitioner may attend the next meeting to provide more information.

The next order of business was a discussion of Professor Peter Cornillon's proposed exemption under the Public Private Partnership Act. Professor Cornillon was present with Louis Saccoccia, Esq. Staff Attorney Gramitt advised that the Commission previously reviewed and approved formal procedures for granting exemptions to allow university researchers to have a financial interest in their research and projects. He informed that the last step in the process is transmittal to the Commission for a review within thirty days. He stated that the Commission does not have veto power but can ask that the Board of Governors reconsider the exemption at an open hearing, or the Commission can simply take no action.

Staff Attorney Gramitt briefly outlined the two conflicts at issue and the proposals for managing them. He indicated that the Professor would no longer be the individual responsible for overseeing the contract and has been removed from oversight of another employee.

Attorney Saccoccia informed that the Professor does not receive compensation for his work with OPeNDAP and has stepped down as president. In response to Commissioner Weavill, he stated that the exemption would be for work done during 2006-2007. Professor Cornillon clarified that it is a four year grant and the monies were received prior to work being performed. He stated that he only draws a salary from the university. After hearing no comments from the Commissioners, Chair Lynch suggested that they take no action and let the exemption go forward.

The Commission took a brief recess from 10:15 a.m. to 10:22 a.m.

The next order of business was consideration of In re: T. Brian Handrigan, DR2006-1, Petition for Declaratory Ruling. Commissioner Weavill filed a section 6 statement indicating that he believed he could fairly and objectively participate in the matter, although his spouse was a former classmate of Mr. Handrigan. The petitioner was present with his counsel, Mark McSally, Esq. The proceedings were stenographically recorded and a copy of the transcript is available at the Commission Offices. Staff Attorney Gramitt outlined the procedure for issuance of a declaratory ruling and the role of Commission Staff. Attorney McSally advised that his client is not here seeking a hardship exception, but requests clarification as to whether the statute actually contains the prohibitions as interpreted by the Commission. Attorney McSally advised that in 1986 the Rhode Island Supreme Court issued an Advisory Opinion to the Governor in

which it found that the prohibition that a public official shall not “represent himself” did not also mean “to be represented” by another. He stated that if the legislature had intended the statute to prohibit such representation, it would have clearly stated it.

Attorney McSally provided a brief recitation of relevant facts regarding Mr. Handrigan’s and his family’s interest in Patricia Development, LLC, as well as the history of the option to purchase the land at issue. He noted that the current lease of the land is for a parking lot, but the proposed mixed residential/business development use is currently allowed and would only require Planning Board review. He stated that Mr. Handrigan’s interest in the property predates his 1996 election to the Council. He represented that Mr. Handrigan has not participated in any appointments to the Planning or Zoning Boards since the issue arose. Attorney McSally argued that Patricia Development is not prohibited from hiring someone to represent it before the Planning Board. He added that the Commission has not adopted any regulation to support its advisory opinion interpretations that section 5(e)’s prohibition applies to subsidiary boards for which the official has appointing authority.

****Commissioner Kirby arrived at 10:40 a.m.**

Staff Attorney Gramitt informed that his memorandum outlines the Commission’s prior arguments before the Superior Court. He advised that there is a good faith basis to argue that the 1986

Advisory Opinion is distinguishable, but he also acknowledged that section 5(e)'s language does not expressly contain prohibitions regarding appearances before subsidiary boards or when represented by another. He suggested that arguments may be made in support of both interpretations and it is up to the Commission to decide. He noted that Legal Counsel Managhan would draft the Declaratory Ruling, which would be treated as a final Decision and Order and would be subject to review on appeal.

In response to Commissioner Cheit, Mr. Handrigan represented that the issue would be the same whether he owned a 1/3 interest or a 100% interest. In response to Commissioner Weavill, Legal Counsel Managhan noted that this is the first time the matter is presented to the Commission strictly for statutory interpretation, since the previous issue related to the hardship exception. She reiterated that the issues presented are 1) representation by another; and 2) representation before subsidiary boards. She expressed her agreement with Staff that both views are defensible in Superior Court. She voiced her own reservations with regard to the argument that he cannot appear before subsidiary boards. She indicated her belief that in the past the Commission made that interpretation in good faith but suggested that a reviewing court would likely find that the statute does not prohibit it. She noted that there are possible legislative changes on the horizon regarding this section of the Code.

Commissioner Binder indicated that there is a strong argument to

support prohibiting your agent from appearing before your own board, but expressed her discomfort with the prohibition running to subsidiary boards. Chair Lynch suggested that the Commission continue with its prior interpretation and let the courts make the decision if it were wrong. Commissioner Segovis noted that the Staff Attorney stated in his memo that the statute can and should be reasonably interpreted that way. Staff Attorney Gramitt explained that the arguments in the memo are from the Superior Court pleadings, in which he presented an argument on the Commission's behalf in support of that interpretation. He distinguished the position he took in arguing before the court, in response to Mr. Handrigan's motion, that 5(e) could be so interpreted, from the Commission deciding today whether it should be interpreted in that fashion. Commissioner Segovis suggested that it should be interpreted in that way.

Commissioner Cheit inquired whether the Commission should have a clearer regulation. He expressed that they should not interpret the statute in any way that is not clearly stated when it has not been put forth in a regulation. Commissioner Butler pointed out that the statute also does not state that you cannot do something by proxy which you could not do yourself, but it is not an illogical interpretation. He expressed his comfort with that interpretation. Commissioner Segovis stated that the Commission has been following its prior interpretation which logically follows from the statutory language. He noted that it would be a sham if one could

send someone else to appear and it would violate the spirit of the law.

Commissioner Cheit commented that the Commission may take a different posture in an advisory opinion than a declaratory ruling. He acknowledged that the advisory opinion process takes them beyond the statute, but they are now being asked a specific question of law, which does not allow them as much room for interpretation as in an advisory opinion. Staff Attorney Gramitt agreed and reiterated that a different question has been posed- whether the language can legally be interpreted to mean that a person subject to the Code cannot represent himself before a subsidiary board or have another person represent him. In response to Commission Butler, Attorney McSally stated that the statute does not prohibit either conduct and the Rhode Island Supreme Court previously interpreted the representation issue in its 1986 Opinion. Commissioner Segovis indicated that the prior case is not on all fours with the present facts and related to the predecessor Commission. Attorney McSally replied that the factual underpinnings are different but the Court's interpretations of what "to represent himself" means is the same.

Commissioner Segovis expressed that the Commission sent Staff Attorney Gramitt to Superior Court to present these arguments on its behalf and it should still apply these interpretations. Commissioner Kirby pointed out that Mr. Handrigan went to court for a declaratory judgment due to a lack of five affirmative votes on his advisory opinion request. He noted that the Commission's brief focused on

APA procedures and the failure to exhaust administrative remedies. Commissioner Kirby also stated that the Commission has not been asked to revisit the hardship issue. Staff Attorney Gramitt advised that a third option could be to issue an advisory opinion granting the hardship exception. Attorney McSally agreed. Commissioner Kirby noted that Mr. Handrigan has agreed not to be involved in the reappointment process of Planning Board members. He suggested that the Commission explore avoiding a court challenge to its statutory interpretation. He suggested issuing an advisory opinion based upon the petitioner having had the option to purchase prior to his election to office, not reappointing Planning Board members, and only appearing passively through counsel. He reiterated that the petitioner held the option to purchase for ten years and the Planning Board's review would be almost ministerial.

Legal Counsel Managhan expressed her support for handling the request via an advisory opinion. Staff Attorney Gramitt advised that the relevant draft advisory opinion is reflected as Option #2 at Tab 4 and would require minor amendments as to dates and language regarding recusal on reappointments. In response to Legal Counsel Managhan, Attorney McSally stated that his client would withdraw his request for a Declaratory Ruling, assuming the Commission issued an advisory opinion as outlined in Option #2. Staff Attorney Gramitt represented that the matter is already noticed on the agenda for issuance of a declaratory ruling on the same issue in open session, so there should not be a problem under the Open Meetings Act.

Chair Lynch pointed out that Option #2 would require deletion of language regarding hardship. Commissioner Segovis recalled that they were awaiting additional information regarding the existence of hardship. Commissioner Butler suggested it would be better to issue the opinion today with the full Commission present than run into quorum problems down the road. Commissioner Weavill voiced his support for issuing the opinion today. Commissioner Cheit advised that it was publicly noticed on the agenda for the very issue under discussion. Staff Attorney Gramitt informed that the opinion is drafted to show that all factors in this instance shall constitute a hardship, allowing Mr. Handrigan to proceed subject to prospective recusal on reappointments to the Planning Board.

Staff Attorney Gramitt read the conclusion section of Option #2 into the record. In response to Commissioner Kirby, Attorney McSally acknowledged that Mr. Handrigan sits on the Personnel Appeals Board, but noted that he would not participate on any issues relating to such members. Staff Attorney Gramitt stated that they could add the representation that Mr. Handrigan would also recuse as a Personnel Appeals Board member to the language. Upon motion made by Commissioner Butler and duly seconded by Commissioner Segovis, there was further discussion. Chair Lynch indicated his desire to remove the hardship language from the opinion. Staff Attorney Gramitt noted that if the hardship language is kept in, it only applies to this petitioner, but removing the language changes the

interpretation. Upon the original motion, it was

VOTED: To issue an advisory opinion, attached hereto, to T. Brian Handrigan, a Narragansett Town Council member.

AYES: Richard E. Kirby, Barbara Binder, Frederick K. Butler, James C. Segovis, Ross Cheit and George E. Weavill, Jr.

NOES: James Lynch, Sr.

Commissioner Weavill stated that he would have voted to issue the advisory opinion last year, but he did not participate at that meeting. He voiced his belief that the appearance before the Planning Board is an almost administrative or ministerial process.

***The Commission took a recess at 11:27 a.m., at which time Commissioner Binder left the meeting, and reconvened at 11:34 a.m. Upon motion made and duly seconded, it was unanimously**

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on June 20, 2006.

**b.) In re: Joseph A. Montalbano,
Complaint No. 2006-4**

**c.) In re: Andrew Teitz,
Complaint No. 2006-1**

AYES: Richard E. Kirby, Frederick K. Butler, James Lynch, Sr., Ross Cheit, James C. Segovis and George E. Weavill, Jr.

At approximately 11:42 a.m., the Commission returned to Open Session. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To seal the minutes of the Executive Session held on July 18, 2006.

AYES: James Lynch, Sr., Richard E. Kirby, Ross Cheit, George E. Weavill, Jr., Frederick K. Butler and James C. Segovis.

The Chair Reported that in Executive Session the Commission voted to take the following actions: 1) approve the Minutes of the Executive Session held on June 20, 2006; 2) initially determine that Complaint No. 2006-4, In re: Joseph A. Montalbano, alleges sufficient facts to constitute a knowing and willful violation of the Code of Ethics; and 3) dismissed with prejudice In re: Andrew Teitz, Complaint No. 2006-1 for failure to allege sufficient facts to constitute a knowing and willful

violation of the Code of Ethics.

The next order of business was discussion of draft regulatory proposals regarding Nepotism and Revolving Door. Senior Staff Attorney D'Arezzo reviewed the addition of language to the Nepotism Proposal as suggested by Legal Counsel Managhan at the last meeting. She also summarized changes Draft Regulation B and the inclusion of Alternatives #1 and #2 to Draft Regulation D, as directed by the Commission at the last meeting. Senior Staff Attorney D'Arezzo advised that the final proposals will be forwarded to the Governor and EDC for input, as required by the APA, and could be noticed for public hearing in September. The consensus of the Commission was to advertise the proposals for a September 26, 2006 public hearing, with no other business on the agenda for that date.

The next order of business was the Director's Report. Executive Director Willever extended the Commission's congratulations to Staff Attorney Robertson and her husband on the birth of their son. He reported that there are seven advisory opinion requests and ten complaints pending. He informed that the Attorney General's Office will be hosting the annual Open Government Summit on August 4th and members and staff are invited to attend. He advised that the staff is preparing to file complaints for the non-filing of financial statements for calendar year 2005. Chair Lynch commented that recent passage of legislation mandates that the Commission provide education, with certification of attendance, to certain public officials

on an annual basis. He suggested that the Commission seek additional money to fund the new requirements. Executive Director Willever replied that he has a tactic to address this issue.

The next order of business was New Business. There being none, at 11:55 a.m. upon motion made by Commissioner Butler and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Richard E. Kirby, George E. Weavill, Jr., Frederick K. Butler, James C. Segovis and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.
Secretary